APPELLANTS' BRIEF ON APPEAL

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants: Satoru Sawada, et al.

Examiner: Cristina O. Sherr

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For: DATA CHARGING SYSTEM, CONTENT GENERATOR, DATA CHARGING APPARATUS, AND DATA CHARGING METHOD

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APPEAL BRIEF

Sir:

Pursuant to 35 USC § 134 and 37 CFR §41.37, entry of Appellants' Appeal Brief, provided in support of Appellants' Notice of Appeal dated January 8, 2008, is respectfully requested.

The Appeal Brief sets forth the authorities and arguments upon which Appellants rely in support of their Appeal from the final rejection of all of pending claims 1, 3-8, 10-16 and 21-25, over US Patent No. 6,209,787, to Iida, as set forth in a final Office Action mailed August 10, 2007.

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being deposited with the United States Patent & Trademark Office via Electronic Filing through the United States Patent and Trademark Office e-business website, on **March 5, 2008**.

Dated: March 5, 2008

John F. Vodopia, Esq.

I. REAL PARTY IN INTEREST

The real party in interest of the present application is International Business Machines Corporation, the assignee of the entire right, title and interest in the above-identified patent application.

II. RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known which directly affect, or will be directly affected by, or have a bearing on, the disposition of the pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-8, 10-16 and 21-25 are pending in the application; claim 2 (not argued on appeal herein) was previously withdrawn by election in response to restriction requirement. Hence, the claims argued on appeal are claims 1, 3-8, 10-16 and 21-25, where claims 1, 3, 10 and 13 are the independent claims.

The status of pending claims 1, 3-8, 10-16 and 21-25, on appeal is as follows: claims 1, 3-8, 10-16 and 21-25 were rejected under 35 USC §103(a) as unpatentable over US Patent No. 6,209,787, to Iida (Iida).

IV. STATUS OF AMENDMENTS

In response a final Office Action mailed August 10, 2007, in the pending application, Appellants filed an Amendment Under 37 CFR 1.116, on October 10, 2007 ("the after final Amendment"). An Advisory Action was mailed from the Patent Office on December 11, 2007 ("the Advisory Action"), which maintained the final rejection of claims 1, 3-8, 10-16 and 21-25. In response to the Advisory Action, appellants filed their Notice of Appeal on January 8, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1, 3-8, 10-16 and 21-25 are pending on appeal. Claims 1, 3, 10 and 13 are the independent claims. Claim 21 depends from claim 1, claims 4-8 depend from claim 3, claims 11 and 12 depend from claim 10 and claims 14-16 depend from claim 13.

A copy of claims 1-8, 10-16 and 21-25 (where claims 1, 2-8, 10-16 and 21-15 are the finally rejected claims on appeal) is attached hereto in the Claims Appendix. Independent claim 3 is presented (in this Section V.) with reference to support for the various independent claim features that are found in appellants' Specification, and related drawing figures. The support is provided parenthetically.

The invention of independent claim 1sets forth a data charging system for charging for the use of object data (**Summary, page 4, line 19-page 5, line 4; Figs. 1, 2; Detailed Description, page 7, line 18-page 8, line 12**), the system comprising:

a server machine for generating contents containing a plurality of types of object data (**Detailed Description, page 19, lines 17-26**),

an IC card including a recording medium for recording (i) charging data for paying for said object data and (ii) recognition data for identifying the type of the object data(**Detailed Description, page 20, lines 1-28**), and

a client machines for receiving said contents generated by the server machine (**Detailed Description, page 19, lines 17-26**),

the client machine including a data charging apparatus for using said IC card to charge for the use of said object data by using said charging data and said recognition data which have been recorded on said IC card (**Detailed Description, page 20, lines 10-16**);

wherein said data charging apparatus comprises:

data reading logic for reading out said recognition data and said charging data from said recording medium(**Detailed Description, page 21, lines 4-9**),

a separator for separating said object data from said contents,

a recognition logic for identifying the specific type of said separated object data by using said recognition data(**Detailed Description, page 22, line 22-page 23, line 5**),

an accounting logic for dynamically charging for the use of said separated object data, based on the type of data said separated object data is, as determined by using said recognition data, and by using said charging data which has been read out from the recording medium (**Detailed Description, page 24, line 12-page 26, line 16**), and

a writing logic for writing, as part of said charging data in the recording medium, the results of charging for the use of said separated object data (**Detailed Description, page 28, lines 12-18**).

10. (Previously Presented) A data charging method for using a server machine for generating contents which contain a plurality of types of object data and recognition data used for the identifying this object data in the generated contents, recording, in an IC card including a recording medium, (i) charging data for paying for said object data and (ii) the recognition data used for identifying the specified type of the object data, and charging for the use of said object data by using said charging data and said recognition data which have been recorded **(Figs. 9-18)**, comprising the steps of:

delivering the generated contents to a client machine **(Specification, page 50, lines 9-27)**; and

using the client machine for

reading said recognition data and said charging data from said IC card **(Specification, page 51, lines 5-12)**,

separating said object data from said contents **(Specification, page 51, lines 14-24)**,

identifying the specified type of said separated object data by using said recognition data which has been read out from the IC card **(Specification, page 51, lines 26-31)**,

using the IC card to charge dynamically for the use of said separated object data, based on the specified type of data said object data is, as determined by using said recognition data, and by using said charging data which has been read out from the recording medium**(Specification, page 52, lines 1-13)**; and

writing into the IC card, as part of said charging data, the results of charging for the use of said recognized object data **(Specification, page 52, line 15-page 53, line 15)**.

10. (Previously Presented) A data charging method for using a server machine for generating contents which contain a plurality of types of object data and recognition data used for the identifying this object data in the generated contents, recording, in an IC card including a recording medium, (i) charging data for paying for said object data and (ii) the recognition data

used for identifying the specified type of the object data, and charging for the use of said object data by using said charging data and said recognition data which have been recorded **(Figs. 9-18)**, comprising the steps of:

delivering the generated contents to a client machine **(Specification, page 50, lines 9-27)**; and

using the client machine for

reading said recognition data and said charging data from said IC card **(Specification, page 51, lines 5-12)**,

separating said object data from said contents **(Specification, page 51, lines 14-24)**,

identifying the specified type of said separated object data by using said recognition data which has been read out from the IC card **(Specification, page 51, lines 26-31)**,

using the IC card to charge dynamically for the use of said separated object data, based on the specified type of data said object data is, as determined by using said recognition data, and by using said charging data which has been read out from the recording medium **(Specification, page 52, lines 1-13)**; and

writing into the IC card, as part of said charging data, the results of charging for the use of said recognized object data **(Specification, page 52, line 15-page 53, line 15)**.

13. (Previously Presented) In a data charging apparatus of a data charging system which uses a server machine to record, on an IC card including a recording medium, (i) charging data used for paying for object data of a specified type and contained in contents and (ii) recognition data used for identifying the specified type of the object data in said contents, and charges for the use of said object data by using said charging data and said recognition data which have been recorded (**Summary, page 4, line 19-page 5, line 4; Figs. 1, 2; Detailed Description, page 7, line 18-page 8, line 12; Figs. 9-18**);

a computer program product enabling a client machine that has received said contents to execute the steps of:

reading said recognition data and said charging data from the IC card, separating said object data from said contents **(Specification, page 51, lines 5-12)**,

identifying the specified type of said separated object data by using said recognition data which has been read out from the IC card **(Specification, page 51, lines 26-31)**,

using said IC card to charge dynamically for the use of said separated object data, based on the specific type of data said separated object data is, as determined by using said recognition data, and by using said charging data which has been read out from the recording medium **(Specification, page 52, lines 1-13)**, and

writing into the IC card, as part of said charging data, the results of charging for the use of said recognized object data into said recording medium **(Specification, page 52, line 15-page 53, line 15)**.

The patentability of the dependent claims shall stand or fall based on the patentability of the independent claims. In more detail, the patentability of dependent claim 21 will stand or fall based on the patentability of independent claim 1 from which it depends, the patentability of dependent claims 4-8 will stand or fall based on the patentability of independent claim 3 from which they depend, the patentability of dependent claims 11, 12 will stand or fall based on the patentability of independent claim 1o from which they depend and the patentability of dependent claims 14-16 will stand or fall based on the patentability of independent claim 13 from which they depend.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3-8, 10-16 and 21-25 were finally rejected under 35 USC 103(a) over US Patent No. 6,209,787 to Iida, by the final Office Action (dated August 10, 2007). Appellants assert that the rejection is improper because Iida does not teach each of the elements of independent claims 1, 3, 10 and 13, nor the subject matter of claims 1, 3, 10 and 13 as a whole.

VII. ARGUMENT

A.) Iida does not render obvious claims 1, 3-8, 10-16 and 21-25 under 35 USC §103(a)

In the final Office Action of August 10, 2007, the rejection of claims 1, 3-8, 10-16 and 21-25 under 35 USC 103(a) over Iida was maintained (on final).

To support the final rejection of independent claim 1, the Examiner states that Iida discloses a data charging system for charging for the use of object data (**Abstract**), the system comprising:

a server machine for generating contents containing a plurality of types of object data **(col. 2, lines 5-50)**,

an IC card including a recording medium for recording (i) charging data for paying for said object data and (ii) recognition data for identifying the type of the object data **(col. 2, lines 40-50)**, and

a client machines for receiving said contents generated by the server machine **(col. 3, lines 40-50)**,

the client machine including a data charging apparatus for using said IC card to charge for the use of said object data by using said charging data and said recognition data which have been recorded on said IC card **(col. 4, lines 20-35)**;

wherein said data charging apparatus comprises:

data reading logic for reading out said recognition data and said charging data from said recording medium **(col. 5, lines 30-35)**,

a separator for separating said object data from said contents **(col. 5, lines 40-35)**,

a recognition logic for identifying the specific type of said separated object data by using said recognition data **(col. 5, lines 45-50)**,

an accounting logic for dynamically charging for the use of said separated object data, based on the type of data said separated object data is, as determined by using said recognition data, and by using said charging data which has been read out from the recording medium, and a writing logic for writing, as part of said charging data in the recording medium, the results of charging for the use of said separated object data **(col. 5, lines 60-65)**.

The Examiner then states that although Iida does not use the same terminology or the same order of steps as claimed, that it would have been obvious for the skilled artisan to adapt Iida to obtain the invention as claimed so **that copyright owners may be assured their royalties provide a return for both the musical industry and musical composers**.

With respect to the rejection of independent claims 3, 10 and 13, the Examiner asserts that the elements of those independent claims are found at col. 5, lines 55-60, col. 5, lines 30-65 and col. 5, lines 30-65, respectively.

In response to the rejection of independent claims 1, 3, 10 and 13, appellants respectfully assert that the Examiner's reasoning that one skilled in the art would know to adapt Iida to obtain the invention of independent claims 1, 3, 10 and 13 so **that copyright owners may be assured their royalties provide a return for both the musical industry and musical composers** is insufficient to establish a prima facie case of obviousness under 35 USC 103(a). In KSR International Co. v. Teleflex, Inc., 82 USPQ2d 1386, 1385 (US 2007), the US Supreme Court held that rejections on obviousness cannot be sustained by mere conclusory statements, but instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

The Examiners stated reasoning that the skilled artisan would know to adapt Iida to realize the invention appears to be hindsight. Hindsight is improper, and cannot be used to establish obviousness under Section 103(a). **That copyright owners may be assured their royalties provide a return for both the musical industry and musical composers** is a very broad conclusory statement, is not "an articulated reasoning with rational underpinning" because any known charging system has as its intent assuring that an owner of a work is paid for its use. Hence, Appellants respectfully urge the Board to overturn the final rejection and allow the pending claims on appeal.

Moreover, in the "Response to Arguments" presented at paragraphs 2-5 of the final Office Action, the Examiner disagrees with Appellants' argument that Iida does not teach or suggest charging data for paying for object data, or recognition data for identifying the type of object data. That is, the Examiner disagrees, and directs Appellants' attention to Iida's col. 11, lines 41-48. The Iida text states that it could be constituted such that a voice recognition method can be adapted for the entry of a portion of a melody that a customer sings, which singing is captured and recognized using Iida's recognition method, that such that the recognized melody is

converted to the score corresponding to the song sang by the customer for recognition by the Iida recognition method. The recognized singing is converted to a converted score, which converted score is then displayed on a monitor.

The Examiner further asserts that the type of data object, or score to be recorded is recognized thereby, and that it is obvious and predictable that the singing data (recognized by Iida' recognition method) is the functional equivalent of Appellants' recognition data. Appellants respectfully disagree with both the stated final rejections, and the "Response To Arguments" for at least the following reasons.

As explained in detail in Appellants' disclosure, the invention relates to a system and method for charging users for copying or using digital data. In a preferred embodiment, a server machine generates digital data content that is delivered to a client machine. This content may be of several types, such as audio, video, static image, or text; and the content may be delivered to the client machine in various ways, such as over a network, or by a data recording medium. In addition, the server writes "electronic money" into an IC card that can be used to pay for the use of the generated content by the client machine. The client machine then uses the delivered digital data content, and the IC card is used to pay for the use of that data.

The IC card is also provided with data, referred to as recognition data, that helps to identify the type of the digital data used by the client machine. The recognition data is used to help determine how much the user should be charged for use of the data. Charging or payment information, and recognition data is written into the IC card. Preferably, both the content sent to the client machine and the IC card is provided with this recognition data. In this way, the recognition data is used by the client machine to identify the type of data the object data is, and also the recognition data from the IC card can be used in the payment process.

Each of independent claims 1, 2, 3, 10 and 13 includes the features (i.e., charging data for paying for object data, and recognition data provided on an IC card for identifying the type of object data) of the present invention, and is readily distinguishable from Iida under 35 USC §

103(a). In particular, each of the independent claims calls out the features that an IC card includes a recording medium for recording (i) charging data for paying for the object data and (ii) recognition data for identifying the type of object data and determining the charge for the object data sent to the client machine.

Iida is readily distinguishable from the present invention as claimed, at least because Iida fails to teach or suggest an IC card including a recording medium for recording charging data for paying for the object data and recognition data for identifying the type of object data, client machines for receiving same that include a data charging apparatus that uses the recording charge and recognition data for determining the charge to the card for the object data (sent to the client machine).

Iida discloses a system for purchasing a personal recording media including a first entering unit for entering an identification information in order to identify a customer, and a unit connected to the first entering unit for identifying whether or not the customer is an authorized customer based on the entered identification information. Iida's system further includes a second entering unit connected to the identifying unit for entering at least one designated information by the customer when the customer is identified as an authorized customer in accordance with the identifying unit, a unit for storing a plurality of information, a unit connected to the second entering unit and the information storing unit for reading information associated with the designated information by retrieving the plurality of information in the information storing unit based on the designated information entered by the second entering unit, and a unit connected to the information reading unit for recording the information read from the information storing unit into a predetermined recording media.

Iida does not make use of, suggest or even mention using an IC card with charging data for paying for object data, or recognition data for identifying the type of object data. For that matter, Appellants respectfully disagree with the Examiner's statement that Iida at col. 2, lines 40-50, discloses an IC card including a recording medium for recording (i) charging data for paying for said object data and (ii) recognition data for identifying the type of the object data.

Iida at col. 2, lines 40-50, describes a method for purchasing a personal recording media for collecting royalties at purchase of an "original compilation recording media." The text does not refer a recording medium for recording (i) charging data for paying for said object data and (ii) recognition data for identifying the type of the object data.

While Appellants agree that Iida conducts a recognition method, whereby the method recognizes an object (musical score) that the user has sung, or hums, and that Iida "hears" and recognizes, Appellants disagree that Iida's recognition method is the same or equivalent to applicants' claimed recording medium for recording (i) charging data for paying for said object data and (ii) recognition data for identifying the type of the object data. Voice singing, or other data presented orally to a Iida machine interface may allow for Iida to recognize a score, or an object, but is not equivalent to applicants' claimed IC card and recording medium for recording (i) charging data for paying for said object data and (ii) recognition data for identifying the type of the object data. Iida's singing data is not presented using an IC card at all, and are not conveyed on a recording medium. While Iida's singing data might lead to an ability for recognizing a score related to the singing, this is readily distinguishable from an IC card including recognition data for identifying the type of the object data as included on a recording medium.

While the Examiner asserts that Iida discloses a separator and recognition logic for identifying the specific type of the separated object data by using the recognition data at col. 5, lines 45-50, Appellants again respectfully disagree. The Iida text at col. 5, line 45-50, merely states that it is preferable that Iida's information storing unit comprise a program storing unit, and that the plurality of information are a plurality of program information including information about a plurality of programs, an index and a copyright. This is not equivalent to Appellants' claimed recognition logic for identifying the specific type of the separated object data using the recognition data.

While the Examiner states that Iida at col. 5, lines 60-65 teaches Appellants' claimed accounting logic for dynamically charging for the use of separated object data based on the type

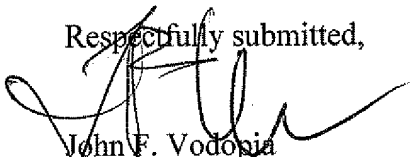
of separated object data, as determined by the recognition data, and using the charging data read from the recording medium, Appellants again respectfully disagree. The cited Iida text indicates two steps: 1) entering designated information by a customer identified as and 2) reading information associated with the designated information by retrieving a database including information relating to the designated information. These steps are for user data input, where based on designated information input by the user, and recognized by the Iida process, other related information is retrieved. These steps, however, are not equivalent to Appellants' claimed accounting logic for dynamically charging.

Iida does not disclose, teach or suggest a system for charging including a server for generating contents containing object data, an IC card including a recording medium for recording (i) charging data for paying for said object data and (ii) recognition data for identifying the type of the object data, a client machine for receiving the contents and including a datya charging apparatus, the data charging apparatus including data reading logic, a separator, a recognition logic, accounting logic and writing logic (each feature as claimed), so cannot be said to disclose, teach or suggest Appellants' invention as set forth in independent claims 1, 3, 10 and 13. Because of the above-discussed differences between claims 1, 3, 10 and 13 and Iida, and because of the advantages associated with these differences, independent claims 1, 3, 10 and 13 patentably distinguish over Iida and are allowable. Claims 21, 24 and 25 are dependent from, and are allowable with, claim 1. Claims 4-8 are dependent from claim 3 and are allowable therewith. Claims 11, 12, 22 and 23 are dependent form claim 10 and are allowable therewith; and claims 14-16 are dependent from, and are allowable with, claim 13.

B.) Conclusion

The other references of record have been reviewed, and these other references, whether considered individually or in combination, also to not disclose or suggest the use of an IC card including a recording medium for recording (i) charging data for paying for said object data and (ii) recognition data for identifying the type of the object data, a separator, recognition logic and accounting logic, as required by claims 1, 3, 10 and 13. The Board is accordingly respectfully urged to overturn the final rejection of claims 1, 3-8, 10-16 and 20-25 under 35 U.S.C. 103(a) in view of Iida, and to allow these claims.

Respectfully submitted,



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Enclosures: Appendices VIII, IX and X

VIII. CLAIMS APPENDIX

1. (Previously Presented) A data charging system for charging for the use of object data, the system comprising:

a server machine for generating contents containing a plurality of types of object data,

an IC card including a recording medium for recording (i) charging data for paying for said object data and (ii) recognition data for identifying the type of the object data, and

a client machines for receiving said contents generated by the server machine,

the client machine including a data charging apparatus for using said IC card to charge for the use of said object data by using said charging data and said recognition data that have been recorded on said IC card;

wherein said data charging apparatus comprises:

data reading logic for reading out said recognition data and said charging data from said recording medium,

a separator for separating said object data from said contents,

a recognition logic for identifying the specific type of said separated object data by using said recognition data,

an accounting logic for dynamically charging for the use of said separated object data, based on the type of data said separated object data is, as determined by using said recognition data, and by using said charging data which has been read out from the recording medium, and

a writing logic for writing, as part of said charging data in the recording medium, the results of charging for the use of said separated object data.

2. (Withdrawn) A content generator on a server machine for embedding digital watermarks in object data of a specific type and generating contents in a data charging system which records, on an IC card recording medium, charging data used for paying for object data contained in said contents and recognition data used for identifying the type of object data in said contents, and said IC card being used by a client machine to charge dynamically only for the use of the object data received by the client machine and embedded with said digital watermarks, based on the specific type of data said object data is, as determined by using said recognition data, and by using said charging data and said recognition data which have been recorded in said recording medium.

3. (Previously Presented) In a data charging system including a server machine which records, on an IC card recording medium, charging data for paying for object data and contained in contents and recognition data used for identifying the type of object data in said contents and pays for the use of said object data by using said charging data and said recognition data which has been recorded in the recording medium,

a client machine including a data charging apparatus comprising:

a data reading logic for reading said recognition data and said charging data from said recording medium,

a separator for separating said object data from said contents,

a recognition logic for identifying the type of said separated object data by using said recognition data read out from the recording medium,

an accounting logic for dynamically charging for the use of said separated object, based on the type of data said separated object data is, as determined by using said recognition data, and data by using said charging data which has been read out from the recording medium, and

a writing logic for writing, as part of said charging data in the recording medium, the results of charging for the use of said separated object data.

4. (Previously Presented) The data charging apparatus according to Claim 3, wherein said contents comprise said object data and said recognition data for recognizing this object data,

said separator separates said object data and said recognition data from said contents,

said recognition logic recognizes said object data, based on said recognition data which has been separated from said contents and on said recognition data which has been read out from said recording medium, and

said accounting logic charges for said object data by using said charging data which has been read out.

5. (Previously Presented) The data charging apparatus according to Claim 3, further comprising a watermarking logic for embedding digital watermarks in said object data which has been separated from said contents, wherein said separator separates said object data and said recognition data from said contents,

said recognition logic recognizes said object data, based on said recognition data which has been separated from said contents and on said recognition data which has been read out from said recording medium, and

said accounting logic charges for said object data embedded with said digital watermarks.

6. (Previously Presented) The data charging apparatus according to Claim 3, wherein a digital watermark is embedded in said object data in said contents,

said data charging apparatus further comprising a means for detecting if said object data is embedded with said digital watermark,

said separator separating said object data and said recognition data from said contents, said recognition logic recognizing said object data, based on said recognition data which has been separated from said contents and on said recognition data which has been read out from said recording medium, and

said accounting logic charging for said object data only if said object data is found to be embedded with said digital watermark.

7. (Previously Presented) The data charging apparatus according to Claim 3, wherein said charging data recorded on said recording medium contains at least payment data which indicates payment made in advance for the use of said object data, and

said accounting logic charges for the use of said object data within limits of an amount indicated by said payment data contained in said charging data.

8. (Previously Presented) The data charging apparatus according to Claim 7, wherein said charging data recorded on said recording medium further contains unit price data representing an accounting unit for the use of said object data and a price corresponding to the accounting unit,

said data charging apparatus comprising an accounting unit detection logic for detecting unit accounting amount data which represents an amount of said accounting unit for the object data which has been separated from said contents,

said accounting logic charging within the limits of the amount indicated by said payment data, based on said unit price data contained in said charging data which has been read out and on the unit accounting amount data which has been detected.

9. (Cancelled)

10. (Previously Presented) A data charging method for using a server machine for generating contents which contain a plurality of types of object data and recognition data used for the identifying this object data in the generated contents, recording, in an IC card including a recording medium, (i) charging data for paying for said object data and (ii) the recognition data used for identifying the specified type of the object data, and charging for the use of said object data by using said charging data and said recognition data which have been recorded, comprising the steps of:

delivering the generated contents to a client machine; and

using the client machine for

reading said recognition data and said charging data from said IC card,

separating said object data from said contents,

identifying the specified type of said separated object data by using said recognition data which has been read out from the IC card,

using the IC card to charge dynamically for the use of said separated object data, based on the specified type of data said object data is, as determined by using said recognition data, and by using said charging data which has been read out from the recording medium; and

writing into the IC card, as part of said charging data, the results of charging for the use of said recognized object data.

11. (Previously Presented) A data charging method according to Claim 10, wherein said object data in said contents are embedded with digital watermarks, comprising the steps of:

separating said object data and said recognition data from said contents;

recognizing said object data, based on said recognition data which has been separated from said contents and on said recognition data which has been read out from said recording medium;

detecting said digital watermark embedded in said object data; and

charging for said recognized object data only by using said charging data which has been read out if said object data is found to be embedded with said digital watermark.

12. (Previously Presented) A data charging method according to Claim 10, comprising the steps of:

separating said object data and said recognition data from said contents;

recognizing said object data, based on said recognition data which has been separated from said contents and on said recognition data which has been read out from said recording medium;

embedding digital watermarks in said separated object data; and

charging for the use of the object data embedded with said digital watermarks by using said charging data which has been read out.

13. (Previously Presented) In a data charging apparatus of a data charging system which uses a server machine to record, on an IC card including a recording medium, (i) charging data used for paying for object data of a specified type and contained in contents and (ii) recognition data used for identifying the specified type of the object data in said contents, and charges for the use of said object data by using said charging data and said recognition data which have been recorded;

a computer program product enabling a client machine that has received said contents to execute the steps of:

reading said recognition data and said charging data from the IC card, separating said object data from said contents,

identifying the specified type of said separated object data by using said recognition data which has been read out from the IC card,

using said IC card to charge dynamically for the use of said separated object data, based on the specific type of data said separated object data is, as determined by using said recognition data, and by using said charging data which has been read out from the recording medium, and

writing into the IC card, as part of said charging data, the results of charging for the use of said recognized object data into said recording medium.

14. (Previously Presented) The computer program product according to Claim 13, wherein said contents contain said object data and said recognition data used for recognition of the object data,

said object data and said recognition data are separated from said contents in said separation step,

said object data is recognized in said recognition step, based on said recognition data which has been separated from said contents and on said recognition data which has been read out from the recording medium, and

a charge is made for said object data in said charging step by using said charging data which has been read out.

15. (Previously Presented) The computer program product according to Claim 13, wherein the computer is made to execute the step of embedding digital watermarks in said object data which has been separated from said contents,

said object data and said recognition data are separated from said contents in said separation step,

said object data is recognized in said recognition step, based on said recognition data which has been separated from said contents and on said recognition data which has been read out from the recording medium, and

a charge is made for said object data embedded with said digital watermarks in said charging step.

16. (Previously Presented) The computer program product according to Claim 13, wherein said object data in said contents are embedded with digital watermarks,

the computer is further made to execute the step of detecting that said object data is embedded with said digital watermarks,

said object data and said recognition data are separated from said contents in said separation step,

said object data is recognized in said recognition step, based on said recognition data which has been separated from said contents and on said recognition data which has been read out from the recording medium, and

a charge is made for said object data in said charging step only if said object data is found to be embedded with said digital watermark.

17-20. (Cancelled)

21. (Previously Presented) A data charging system according to Claim ~~20~~ 1, wherein the server generates watermark information about the digital watermark and also embedded in said contents.

22. (Previously Presented) A method according to Claim 11, further comprising the step of embedding in said contents information about the digital watermarks.

23. (Previously Presented) A method according to Claim 22, wherein the embedding step includes the step of embedding in said contents instructions for embedding the contents with said digital watermarks.

24. (Previously Presented) A data charging system according to Claim 1, wherein:

the content generator also puts recognition data in said contents; and

the object data is identified based on the recognition data in said contents and said recognition data read from the recording medium.

25. (Previously Presented) Apparatus according to Claim 24, wherein the recognition logic compares the recognition data read out from the IC card with the recognition data separated from said contents to determine if said two kinds of recognition data match.

IX. EVIDENCE APPENDIX

None. There is no evidence presented.

X. RELATED PROCEEDINGS APPENDIX

None. There are no related proceedings.

TRANSMITTAL OF APPEAL BRIEF (Large Entity)	Docket No. 12924

In Re Application Of: **Satoru Sawada, et al.**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/457,842	12-09-1999	Cristina O. Sherr	45600	3621	8134

Invention: **DATA CHARGING SYSTEM, CONTENT GENERATOR, DATA CHARGING APPARATUS, AND DATA CHARGING METHOD**

COMMISSIONER FOR PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

January 8, 2008

The fee for filing this Appeal Brief is: **$510.00**

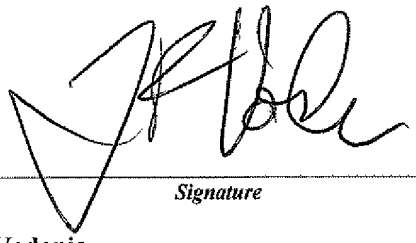
☐ A check in the amount of the fee is enclosed.

☒ The Director has already been authorized to charge fees in this application to a Deposit Account.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. **50-0510/IBM**. I have enclosed a duplicate copy of this sheet.

☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.



Signature

Dated: **March 5, 2008**

John F. Vodopia
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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

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